

### **Part 3**

## **Division of Facilities Construction and Management Leasing**

#### **63A-5-301 Definitions.**

As used in this part:

- (1)
  - (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.
  - (b) "Agency" does not include:
    - (i) the legislative branch;
    - (ii) the judicial branch; and
    - (iii) a higher education institution.
- (2) "Agency optional term" means an option that is exclusively exercisable by an agency to extend the lease term.
- (3) "Director" means director of the Division of Facilities Construction and Management.
- (4) "Division" means the Division of Facilities Construction and Management.
- (5) "High-cost lease" means a real property lease that:
  - (a) has an initial term including any agency optional term of 10 years or more; or
  - (b) will require lease payments of more than \$5,000,000 over the term of the lease including any agency optional term.
- (6) "Significant lease terms" includes the duration of the lease, the frequency of the periodic payments, renewal clauses, purchase options, cancellation clauses, repair and maintenance clauses, and restrictions on use of the property.

Amended by Chapter 12, 2007 General Session

#### **63A-5-302 Leasing responsibilities of the director.**

- (1) The director shall:
  - (a) lease, in the name of the division, all real property space to be occupied by an agency;
  - (b) in leasing space, comply with:
    - (i) Title 63G, Chapter 6a, Utah Procurement Code; and
    - (ii) any legislative mandates contained in the appropriations act or other specific legislation;
  - (c) apply the criteria contained in Subsection (1)(e) to prepare a report evaluating each high-cost lease at least 12 months before it expires;
  - (d) evaluate each lease under the division's control and apply the criteria contained in Subsection (1)(e), when appropriate, to evaluate those leases;
  - (e) in evaluating leases:
    - (i) determine whether or not the lease is cost-effective when the needs of the agency to be housed in the leased facilities are considered;
    - (ii) determine whether or not another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing;
    - (iii) determine whether or not the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;
    - (iv) compare the proposed lease payments to the current market rates, and evaluate whether or not the proposed lease payments are reasonable under current market conditions;

- (v) compare proposed significant lease terms to the current market, and recommend whether or not these proposed terms are reasonable under current market conditions; and
- (vi) if applicable, recommend that the lease or modification to a lease be approved or disapproved;
- (f) based upon the evaluation, include in the report recommendations that identify viable alternatives to:
  - (i) make the lease cost-effective; or
  - (ii) meet the agency's needs when the lease expires; and
- (g) upon request, provide the information included in the report to:
  - (i) the agency benefitted by the lease; and
  - (ii) the Office of Legislative Fiscal Analyst.
- (2) The director may:
  - (a) subject to legislative appropriation, enter into facility leases with terms of up to 10 years when the length of the lease's term is economically advantageous to the state; and
  - (b) with the approval of the State Building Board and subject to legislative appropriation, enter into facility leases with terms of more than 10 years when the length of the lease's term is economically advantageous to the state.

Amended by Chapter 347, 2012 General Session

**63A-5-303 Lease reporting and coordination.**

- (1) The director shall:
  - (a) prepare a standard form upon which agencies and other state institutions and entities can report their current and proposed lease activity, including any lease renewals; and
  - (b) develop procedures and mechanisms within the division to:
    - (i) obtain and share information about each agency's real property needs; and
    - (ii) provide oversight and review of lessors and lessees during the term of each lease.
- (2) Each agency, the Judicial Council, and the Board of Regents for each institution of higher education shall report all current and proposed lease activity on the standard form prepared by the division to:
  - (a) the State Building Board; and
  - (b) the Office of Legislative Fiscal Analyst.

Enacted by Chapter 113, 1995 General Session

**63A-5-304 Leasing by the Judicial Council and the Administrative Office of the Courts -- Director's responsibilities.**

- (1) Before executing any high-cost lease or a modification to a lease that results in a high-cost lease, the Administrative Office of the Courts shall submit a draft of the new lease or modification to:
  - (a) the Judicial Council; and
  - (b) the director of the Division of Facilities Construction and Management.
- (2) The director shall:
  - (a) review the drafts submitted by the Administrative Office of the Courts; and
  - (b) within 30 days after receiving the drafts from the office, submit a report on those drafts to:
    - (i) the Judicial Council; and
    - (ii) the Office of Legislative Fiscal Analyst.
- (3) The report shall contain:

- (a) the director's opinion about:
    - (i) whether or not the lease or modification is cost-effective when the needs of the entity to be housed in the leased facility are considered;
    - (ii) whether or not another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing; and
    - (iii) whether or not the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;
  - (b) a comparison of the proposed lease payments to the current market rates, and a recommendation as to whether or not the proposed lease payments are reasonable under current market conditions;
  - (c) a comparison of proposed significant lease terms to the current market, and a recommendation as to whether these proposed terms are reasonable under current market conditions; and
  - (d) a recommendation from the director that the lease or modification to a lease be approved or disapproved.
- (4)
- (a) The Administrative Office of the Courts may not execute any new high-cost leases or modifications to any existing lease that will result in a high-cost lease unless that lease or those modifications are approved by a majority vote of the Judicial Council.
  - (b) The Judicial Council shall consider the recommendations of the director of the division in determining whether or not to approve high-cost leases and modifications resulting in high-cost leases.

Enacted by Chapter 113, 1995 General Session

**63A-5-305 Leasing by higher education institutions.**

- (1) The Board of Regents shall establish written policies and procedures governing leasing by higher education institutions.
- (2) Except as provided in Sections 53B-2a-113 and 63M-2-602, a higher education institution shall comply with the procedures and requirements of the Board of Regents' policies before signing or renewing a lease.

Amended by Chapter 240, 2016 General Session